In the High Court of Judicature at Madras

Dated: 01.12.2006

Coram

The Honourable Mr.JUSTICE P.D.DINAKARAN
and
The Honourable Mr.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.No.2482 of 2004

M/s.Ravi Paints and Chemicals Ltd.,
rep. by its Managing Director
Mr.B.G.Rajan,
(Old No.3/11B), New No.81,
Seshachia Gramani Street,
Chennai. .... Appellant

Vs.

The Commissioner of Central Excise,
"C" Division, Chennai I
Commissionerate, 26/1 Mahatma
Gandhi Road, Chennai. .... Respondent

Appeal filed under Section 35G of the Central Excise Act 1944 against the final order No.576/2004 dated 21.5.2004 passed by Customs, Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai, made in Appeal E/859/01/MAS.

For Appellant : Mr.Rathina Asokan

For Respondent : Mr.P.Wilson
Asst. Solicitor General

J U D G M E N T

(Judgment of the Court was delivered by P.D.DINAKARAN,J)

The above appeal is directed against the Final order No.576/2004 dated 21.5.2004 passed by Customs, Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai (hereinafter referred to as 'CESTAT'), made in Appeal E/859/01/MAS. Even though the appellant has raised various substantial questions of law, the following question of law would be relevant for the disposal of the above appeal:

" Whether the Appellate Tribunal was justified drawing inference on questions relating to fact and act as an original authority without giving a proper opportunity to the appellant to explain the same ? "

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2.1. The detailed facts that are relevant for the disposal of this appeal are:

The appellants are engaged in the manufacture of paints and varnishes. They initially made four claims to the tune of Rs.4,41,561/- for the period from 1990-91 to 1993-94 as per the following details:-

Year	*Refund Amount (Rs.)*	*Date of filing*
1990-91	39,888/-	20.01.97
1991-92	77,831/-	20.01.97
1992-93	1,52,636/-	20.01.97
1993-94	1,71,206/-	20.01.97

2.2. The above claims were made consequent to the decision of the CEGAT, SRB, Chennai, rendered in the appellant's own case vide by order dated 25.8.95, in which, the CEGAT while considering the issue with reference to the financial year 1989-90, held that as per the then existing Modvat provisions, the assessee was not required to pay back the sum. Even though the said claims were originally rejected by the Assistant Commissioner of Central Excise, by order dated 17.12.1997, the same, on appeal before the Commissioner, was held in favour of the appellant with a direction to the Assistant Commissioner to refund the said amount of Rs.4,41,561/-. But, at the time of refund, the appellant made a further claim for a sum of Rs.3,47,312/-, totalling to Rs.7,88,873/-. The Assistant Commissioner, by his order dated 22.2.1999, sanctioned refund of Rs.7,88,873/-, instead of Rs.4,41,561/-, which was originally claimed by the appellant, but rejected by the Assistant Commissioner.

2.3. Hence, a show cause notice dated 17.8.99 was issued to the appellant for recovery of the excess amount, viz., Rs.3,47,312/-, erroneously sanctioned to the appellant by order dated 22.2.1999 passed by the Assistant Commissioner. The appellant reiterated his claim before the original authority for the excess amount of Rs.3,47,312/-, but the same was rejected by order dated 17.11.99, against which, an appeal was preferred before the Commissioner (Appeals), who also, by order dated 26.5.2000, rejected the claim on the ground of non-compliance of the order in the stay application to pre-deposit the amount of Rs.3,47,312/- for entertaining the appeal. Aggrieved by the same, the appellant preferred an appeal before the Tribunal and the Tribunal, by its order dated 11.8.2000, directed the appellant to pre-deposit the said sum and on such compliance, directed the Commissioner (Appeals) to adjudicate the matter de nova.

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2.4. Against the said order of the Tribunal dated 11.8.2000, the appellant filed a writ petition before this Court in

W.P.No.19584 of 2000. This Court, by order dated 22.11.2000, directed the appellant to pay a sum of Rs.1 lakh and on such compliance, the Commissioner was directed to dispose of the appeal on merits. In consequent to the said order dated 22.11.2000 made in W.P.No.19584 of 2000, the appeal preferred by the appellant before the Commissioner (Appeals) was again dismissed by the Commissioner vide order dated 16.7.2001 holding in favour of the Revenue. Against the said order, the appellant preferred an appeal before the CESTAT, which confirmed the order of the Commissioner (Appeals). Hence, the present appeal by the appellant.

3. Mr.Rathina Asokan, learned counsel appearing for the appellant, contends that his claim for the excess amount of Rs.3,47,312/-, which is sought to be recovered by the department, pursuant to the show cause notice dated 17.8.99, is based on the order dated 19.12.95 made in Appeal No.247/95(M), which covers the claim relating to 1.4.1993 held in favour of the appellant, which was not contested by the department thereafter before the Tribunal. Unfortunately, the learned counsel for the appellant is not in a position to produce the said order dated 19.12.1995 relied upon by him, nor by the learned Assistant Solicitor General, who reiterated the submissions made before the appellate authority that the original claim of the appellant is only for Rs.4,41,561/-, but the Assistant Commissioner erroneously passed an order sanctioning refund of Rs.7,88,873/- and hence, the recovery of excess amount of Rs.3,47,312/- is justifiable.

4. After careful consideration of the submissions made on both sides, we are of considered opinion that, in the interest of justice, the appellant shall be directed to pay 50% of the disputed amount of Rs.3,47,312/-, which works out to Rs.1,73,656/-. It is seen that the appellant has already paid Rs.1 lakh pursuant to the order of this Court dated 22.11.2000 made in W.P.No.19584 of 2000. Hence, the appellant shall pay the balance amount of Rs.73,656/-.

5. In view of the above, we dispose of the appeal on the following terms:-

(i) the matter is remitted back to the file of of Commissioner of Central Excise (Appeals), on condition the appellant pays Rs.73,656/- (Rupees seventy three thousand six hundred and fifty six) being the difference of Rs.1,73,656/- and Rs.1,00,000/- already paid, within a period of eight weeks from the date of receipt of copy of this order;

(ii) on such compliance, the Commissioner of Central Excise (Appeals) is directed to dispose of the appeal on merits and in the light of the order dated 19.12.95 made in Order-in-Appeal No.247/95(M) within two months

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from the date of the payment of the balance amount by the appellant, as directed above."

No costs.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner of Central Excise
(Appeals), 'C' Division, Chennai-I Commissionarate
26/1, Mahatma Gandhi Road, Chennai-34.

2. The Customs,
Excise and Service Tax Appellate Tribunal
South Zonal Bench at Chennai.

1 cc to M/s.Rathina Asokan, Advocate, SR.59505
1 cc to Mr.P.Wilson, Asst. Solicitor General, SR.59354

jsk (co)

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